

**SUPREME COURT OF INDIA**

Registrar General High Court of Gujarat

Vs.

Jayshree Chamanlal Buddhbhatti

C.A.No.9346 of 2013

(H.L.Gokhale and Dipak Misra JJ.)

22.10.2013

**JUDGEMENT**

**H.L. GOKHALE J.**

1. Leave Granted.

2. This appeal by Special Leave seeks to challenge the judgment and order rendered by a Division Bench of Gujarat High Court dated 15.5.2009, allowing the Special Civil Application No.2880 of 2008, filed by the respondent herein.

3. The appeal raises the question with respect to the disputed termination of services of the respondent herein as a Civil Judge, Junior Division, in the Gujarat Judiciary. The impugned judgment has accepted the contention of the respondent that the termination of her services was a stigmatic one, and she was removed from her services after an inquiry in which she was not informed of the charges against her, nor was she given the opportunity of being heard in respect of those charges, which are the minimum requirements under Article 311 (2) of the Constitution of India. As against that, the contention of the appellants has been that the respondent's service was discontinued during the period of her probation, since she was not found suitable for the post she was holding, and it was not a stigmatic termination to attract Article

311 (2) of the Constitution of India.

Facts leading to this appeal are this wise:-

4. The respondent appeared for the selection for the post of a Civil Judge, Junior Division, in the year 2003, and obtained 7th rank out of 84 candidates, and was appointed as a Civil Judge on 2.3.2005. To begin with, she was placed on probation for a period of two years. Her initial posting was at Rajkot to undergo the training alongwith the District Judge. Subsequent thereto, she was given a full-fledged posting as a Civil Judge and Judicial Magistrate First Class, at Kodinar District Junagadh, by the order of the High Court dated 30.12.2005. She took the charge of the said post on 7.1.2006.

5. It is her case that she was discharging her duties faithfully and sincerely, but in the course of her work she found that some of her subordinate staff members were not conducting themselves properly, and were involved in taking the court papers outside the court premises, which was something that could not be permitted. She wrote letters to the then District Judge, Junagadh Mr. B.U. Joshi, on 16.5.2006 and 19.5.2006, with respect to the difficulties faced by her, due to the behavior of the subordinate staff, and amongst other things she recorded this particular conduct on their part. There was no response to these letters, but she received adverse remarks, vide the letter dated 19.9.2006, addressed by the Registrar (Administration) of the High Court of Gujarat. The said letter read as follows:-

“Confidential

J.C. Upadhyay

Registrar (Administration)

High Court of Gujarat, at Sola

Ahmedabad-380 060

No. A. 0722/82

Dated 19.9.2006

To

Miss J.C. Buddhahatti,

Principal Civil Judge and

Judicial Magistrate,

First Class, Kodinar

Through: The Principal District Judge, Junagadh

Subject: Adverse remark- Communication of ...

Madam,

With reference to the subject noted above, I am directed by the Hon'ble the Acting Chief Justice and Judges, to state that the following remarks have been passed in the Confidential Report in Form No. III in respect of you:-

(4) Personal characteristics:

(8) Politeness and courtesy Required improvement

(5) The District Judge's Assessment Of the Civil Judge regarding his/her-

(x) Attitude towards the public and the bar Requires improvement

I am, therefore, directed by their Lordships to request you to be so good as to try to show improvement in these respects in future.

Yours faithfully

Sd/-

Registrar (Admn.)”

6. The respondent replied to the said communication by her letter dated 14.11.2006, in which she pointed out that the disposal of cases by her had been good. She had disposed of 509 Civil and 1619 Criminal cases totaling to 2128 cases during the period January 2006 to October 2006. She stated in her letter that it would not have been possible to do so without her good attitude, and also without the cooperation of the bar and public. In any event, she assured in her reply that she will try to improve politeness and courtesy, and also improve her attitude towards the public and the bar.

7. Thereafter, the respondent received a letter dated 25.7.2007 from the Registrar Administration, High Court of Gujarat communicating adverse remarks for the subsequent period. This letter reads as follows:- “No.A.0722/82

Date: 25-7-2007

To

Miss J.C. Buddhahatti

Principal Civil Judge and

Judicial Magistrate, First Class,

Kodinar.

Through : The Principal District Judge, Junagadh.

Subject : Adverse remarks-

Communication of...

Madam,

With reference to the subject noted above, I am directed by the Honourable the Chief Justice and Judges to state that, the following remarks have been passed in the Confidential Report in Form No.IV in respect of you :-

(3) Character :

(c) Whether she mixes in Yes, it is heard so. such company as she should not.

(d) Whether she maintains No, it is heard so. Judicial aloofness By limited contact.

(4) Personal characteristics :

(4) Clarity of thought and Required improvement expression in correspondence and discussion

(8) Politeness and courtesy Required improvement

(5) The District Judge's

Assessment of the Civil

Judge regarding his / her

i) Ability Now appears, not able for independent station.

(vi) Judicial qualities Now appears it required Improvement

(vii) (A) Administrative capacity, Now appears Knowledge of administrative work and office routine inadequate

(x) Attitude towards the public Required improvement And the Bar

(xi) Any other remarks She has threatened the Staff in the name of District Judge. Hence She is not reliable and Hence it is not possible For the D.J. to enter in Her Chamber without third person.

I am, therefore, directed by Their Lordships to request you to be so good as to show improvement in these respects in future.

Yours faithfully,

Registrar (Admn.)

8. The respondent replied the said letter on 24.8.2007 and her reply reads as follows:-

“Confidential

No.24/2007

Principal Civil Court Kodinar.

Dt. 24-08-2007

From

Miss J.C. Buddhbhatti,

Principal Civil Judge and

Judicial Magistrate, First Class,

Kodinar.

To,

The Hon'ble Registrar (Administration)

High Court of Gujarat, at Sola

Ahmedabad- 380060.

Through: The Principal District Judge, Junagadh

Subject: Clarification in respect of communication of Adverse Remarks.

Ref: Your Honour's Letter No.A.0722/82,Dt.27/7/07

Respected Sir,

With reference to the subject noted above, I have honour to submit my reply as under, kindly consider the same.

1) The remarks in respect of my characters as shown 3(c)(d), are based on hearsay because as a judicial officer I maintain judicial aloofness and I am not keeping any relation or company with any person which should not.

2) The remarks in respect of my personal characteristic as shown in para-4 – I will follow the instructions and will improve the requirement as shown in said remarks.

3) With reference to remarks shown in para-5(i) – I have to state that I have disposed of total cases 3317 (834+2483) Civil as well as criminal case during my tenure in independent station and tried to minimize the arrears. So I

believe that I am able to work in independent station. Further, I will try to improve judicial qualities as mentioned in para-5(vi).

4) In respect of remarks mentioned in para-5(vii)(a). I submit that I am fresh recruited and require experience in respect of administrative work even though I am trying to see that office routine work should run smoothly and I am confident in near future I will be able to achieve perfect administrative capacity and knowledge of administrative work and office routine work.

5) In respect of remarks in para-(x), I have disposed total 3317 (834+2483) civil as well as criminal cases during my tenure. It is not easy to do so without my good attitude and also without the co-operation of Bar and Public. My relation with public and Bar is cordial. Further Bar Association has no complaint against me.

6) With reference to remarks in para-5(xi). I submit that some of the staff members including Registrar, criminal clerk and senior clerk were mischievous and tried to hamper administrative works. I complained against the criminal clerk and Registrar and account clerk to the District Judge in writing. Some of the staff members were impolite and uncontrollable and did not maintain the dignity of a lady Judge. I have not threatened them in the name of District Judge but most of the male staff members from Junagadh and working in Kodinar Court, they threatened me in the name of District Judge. Those members of the staff are already transferred from this station and senior clerk Mr. M.H. Tanna, was convicted for offence punishable under Section 302 of Indian Penal Code. So at present relationship between the presiding officer and staff members are quite good and administrative work runs smoothly. I have every respect for my District Judge and never shown any disregard for him. During my tenure District Judge Shree B.U. Joshi Saheb and Shree R.D. Kothari Saheb has periodically visited my court and I behaved politely with them and have not shown disregard for them so as superior officer naturally. District Judge Saheb can enter in my Chamber during the visit. Further I have never been instructed by my superior officers in any occasion during their visit for any untoward incident.

Further I assure I will try to do my level best to comply the suggestions for improvement as per your Honours desire.

Thanking you,

Yours Faithfully,

(Miss J.C. Buddhbhatti)

Principal Civil Judge and

J.M.F.C. Kodinar.”

9. Then followed the termination of the service of the respondent vide a notification No.CJM/102004/340/D (Part) dated 14.12.2007. The termination letter reads as follows:-

“GOVERNMENT OF GUJARAT LEGAL DEPARTMENT

Sachivalaya, Gandhinagar

Dated : 14th December, 2007

NOTIFICATION NO.CJM/102004/340/D (Part)

Miss J.C. Buddhabhati, Principal Judge and JMFC, Kodinar was appointed in cadre of Civil Judge (JD) by this department Notification No.CJM-102004-340-D (Part) dated 2.3.2005 on probation for two years.

The Hon'ble High Court, on the strength of material on record relating to period of probation of Miss J.C. Buddhabhati, Civil Judge and JMFC, has found that her performance is not good and satisfactory and that she is not suitable for the post she holds, and therefore recommended to terminate her probation period immediately and she should not be continued to officiate for long term.

The Government of Gujarat accordingly accepts the recommendation of Hon'ble High Court and terminates appointment on probation period of Miss J.c. Buddhabhatti, Principal Civil Judge and JMFC, Kodinar with immediate effect.

By order and in the name of the Governor of Gujarat.

(V.K. PUJARA)

Deputy Secretary to Government

Legal Department”

10. The respondent was naturally shocked to receive this order, and made a representation on this termination letter on 4.1.2008, in which she pointed out that if she was given an opportunity of being heard, she could have clarified the position with respect to whatever material that was there on record, relating to her probation period, and on the basis of which her performance was held not to be good and satisfactory. As far as her merit is concerned, she submitted that during her tenure she had rendered 271 judgments in civil matters, and 523 judgments in criminal cases. She was one of the very few candidates who were given independent postings at the beginning of their career. She pointed out that as per the norms of disposal, an average judicial officer holding an independent charge was supposed to decide six civil matters and eight criminal matters in a month, and her disposal was far more than the required average. Her performance was rated as very good for the period from 7.4.2006 till 31.12.2006, and also during the year 2007. She added that to the best of her information 115 Judges were appointed during her time which included some 80 Judges of her batch, and none of them had given as many judgments as she had, both on civil as well as on criminal side. She further stated that as per her information only 25 of her judgments were carried in appeal to the appellate court, and one up to the High Court which got confirmed.

11. The respondent thereafter pointed out that as Principal Civil Judge and JMFC, she was supposed to conduct some Miscellaneous cases (such as concerning liquor prohibition) alongwith civil and criminal matters. When she joined as a Judge, some 835 Misc. cases were pending in her court, out of which she disposed of 613 cases in the year 2007. She pointed out in her representation that because of her industry and integrity, some of her subordinate staff members who were otherwise dishonest, started behaving in an uncouth, uncivilized and non-chivalrous manner. She was therefore, constrained to record in her letters dated 7.9.2006 and 30.9.2006 to the then District Judge of Junagadh, Mr. B.U. Joshi, with respect to the misconduct of Mr. D.R. Weghela, clerk in charge of criminal matters, and C.O C. Mr. R. R. Sewak. She had also given an oral complaint against another clerk, one Mr. M.H. Tanna, to the District Judge regarding his misconduct, since he had demanded alcohol from an accused, and remained drunk while he was on duty. She also recorded that Mr. Tanna threatened her that she was on probation, and if she did not toe his line, she would not be confirmed. She recorded that this very person was an accused in another case under Section 302 of I.P.C, and at that time he was

enlarged on bail, but subsequently had come to be convicted by judgment and order dated 4.9.2006 passed by the Sessions Judge, Junagadh.

12. Thereafter, the respondent recorded in that letter, that she had reported to the then District Judge, Mr. B.U. Joshi that despite her warning time and again, the above referred three persons used to come in a drunken state to the court premises, and used to threaten her by calling names in vulgar Gujarati slang. She had given a written complaint, dated 3.2.2007, against Mr. R.R. Sevak and night watch-man Mr. V.B. Solanki, to the District Judge who succeeded Mr. B.U. Joshi. In view of her complaint, the said Mr. Solanki was transferred from the post of night watchman, but still at night time he used to come without her permission outside her residence in a drunken state along with some advocates. The advocates also used to send their clients in a drunken state to her residence. Having been made to face such hostility from a few members of the bar and the criminal elements in the staff, she asked: 'In the face of such hostile members of the bar and the criminal members (of the staff) can an unmarried woman be safe?' She had been given no protection despite all these hardships, and yet she continued to do her best, but in return had been served with the order of termination. She specifically stated that the vigilance officer of the High Court Mr. B.U. Joshi, who was the earlier District Judge of Junagadh, had protected and encouraged the staff members against whom she had made complaints, and had therefore, made adverse remarks in the year 2006. In any case, she pointed out that those adverse remarks were contrary to the material on record.

13. By the time of sending of this reply, the respondent had come to know that the officer conducting the inquiry, had given credence to an allegation of her being involved with one Mr. N.P. Thakkar, who was also a trainee Judge alongwith her at Rajkot. Hence, by way of caution, sensing that the action against her had perhaps been taken due to those allegations, she explained her position in that behalf. She accepted that sometimes she did discuss legal problems with her senior judges and co- trainee judges like Mr. Thakker. Sometimes such discussions lasted for some longer time, but that was all. After her joining as Civil Judge, at Kodinar she had never met Mr. Thakker, who was posted as the Civil Judge and JMFC, at Jetpur. Unfortunately, it so happened that the wife of Mr. Thakker committed suicide on 1.1.2007, and her mother lodged an F.I.R at Jetpur against Mr. Thakker, for the offences under Section 498 A, 306, 114 of I.P.C read with Section 3 & 7 of the Dowry Prohibition Act, 1961. In that F.I.R, a doubt was raised regarding the involvement of Mr. Thakker with another woman. The name of the respondent was not mentioned therein but the local daily newspapers of Saurashtra blamed the respondent for the incident, and damaged her reputation, as if she was responsible

for that incident. Thereafter, the respondent specifically stated in her reply that Vigilance Officer had made a one-sided report, and had not heard her, as well as majority of the members of the bar, regarding the allegations against her. It is on the basis of such a prejudiced report that her probation period was being terminated.

14. In her letter the respondent specifically asserted as follows and it is relevant to quote:-

“I have proved my mettle and potential in the face of hostile staff and some members of the Bar, and in the face of hostile male dominant society, and in the face of dishonest yellow journalism.”

The respondent therefore, requested that her case be reviewed, and sought reinstatement with continuity, backwages, and consequential benefits.

15. The aforesaid representation was however not considered, and that led her to file a Writ Petition in the High Court. The appellants filed a reply and vigorously contested the Writ Petition. The High Court on the judicial side however held that the termination of the respondent was in breach of Article 311, inasmuch as she was not informed of the charges against her, nor was she given the opportunity of being heard in respect thereof. The Court held that, this was not a case of termination simpliciter of a probationary officer, and therefore, set-aside the termination of her services, and directed her reinstatement with backwages. It is this order which is under challenge in the present matter. Mr. Preetesh Kapur, learned counsel has appeared for the appellants, and Mr. R.P. Bhatt learned senior counsel has appeared for the respondent.

Consideration of the material on record:-

16. When we go through the record, one thing is clear that the High Court administration first conducted a discreet inquiry against the respondent, and thereafter another inquiry called as preliminary inquiry. The initial discreet inquiry was conducted by the then District Judge, Junagadh, Mr. Kothari, whereas the subsequent inquiry, was conducted by Mr. B.U. Joshi, who had by that time become the then Registrar (Vigilance). It is material to note that same Mr. B.U. Joshi was the District Judge when the respondent made her initial complaints about the behaviour of her subordinate staff that they were not working properly, and Mr. Joshi had not taken any action on those complaints. Instead, he made certain adverse remarks on her personal characteristics with respect to politeness and

courtesy that it required improvement. Therefore, in view of his association with the controversy at an earlier stage as the District Judge, the minimum that was expected of Mr. B.U. Joshi was to recuse himself from the preliminary inquiry. The impugned judgment has, therefore, characterized him, in para 12.16 thereof, as being prejudiced even before the initiation of the preliminary inquiry. It is the report of this preliminary inquiry which has led to the termination of the probation period of the respondent as unsatisfactory. It is also material to note that during this preliminary inquiry, Mr. B.U. Joshi, in his capacity as the Registrar (Vigilance), did not call those persons to give evidence who had given statements in favour of the respondent during the discreet inquiry. This included her peon and senior staff members. What is quite relevant to note is that the earlier mentioned Mr. Sewak, who did not get along with the respondent, had given a statement in support of her during the course of the discreet inquiry. Not less than 38 advocates had given a statement in her favour, and pointed out that her performance was in fact good, and also that there were no behavioral problems with respect to her functioning. If this information was available to Mr. B.U. Joshi as the Registrar (Vigilance), through the report of the discreet inquiry, which was conducted by the then District Judge Mr. Kothari, it was expected of him to verify that material by calling the persons concerned, and recording their statements. The impugned judgment has noted this one-sided approach of the Registrar (Vigilance), and called it as biased. The preliminary inquiry laid an emphasis on the fact that the respondent used to talk to the aforementioned Mr. Thakker on telephone, and that those talks had crossed the prescribed limit. The impugned judgment records that it is not uncommon for a colleague to talk to another colleague, and merely because one colleague is male and the other is female, it is no reason to suspect that permissible lines had been crossed and then to draw an adverse inference against the character of the lady Judge.

17. What is most significant to note is that the inquiry report, has referred to the suicide by the wife of Mr. Thakker, and it contains certain observations involving the respondent as follows:- “Thereafter, it was respectfully submitted by the Registrar (Inspection) to the Hon’ble the Chief Justice and the Hon’ble Mr. Justice A.M. Kapadia that, in connection with the suicide committed by Smt. Archana w/o Mr. N.P. Thakker, Addl. Civil Judge & JMFC, Jetpur, the mother of the deceased has lodged the complaint bearing C.R. No.I/9/07 with Jetpur City Police Station against Mr. N.P. Thakker and his family members. It is alleged in the said complaint that due to illicit relations between Mr. N.P. Thakkar and Ms. JC Buddhabhatti Smt. Archana has committed suicide.”

18. What is rather disturbing is that no such material was produced before the High Court involving the name of the respondent. On the other hand, Shri R.P. Bhatt, learned senior counsel appearing for the respondent, has drawn our attention to the deposition of the mother of the deceased in the Criminal Case concerning the death of the wife of Mr. N.P. Thakker. She has not named the respondent therein.

19. The question, therefore, comes for consideration, as stated earlier, as to whether this is a case of termination simpliciter of the services of a probationer on account of her unsuitability for the post that she was holding, or whether it is a termination of her services after holding an inquiry behind her back, and without giving her an opportunity to defend.

20. The legal position in this behalf has evolved over the years, and there are numerous judgments which govern this kind of a situation in the light of Article 311 (2) of the Constitution, which have been pronounced from time to time over the years. The learned counsel for the appellants as well as for the respondent have drawn our attention to the relevant judgments holding the field, and we shall refer to the salient ones amongst them.

Legal submissions of behalf of the appellants:-

21. The principal submission on behalf of the appellants has been that this is a case of termination simpliciter of the services of a probationer during the extended period of probation, without any stigma attached, and therefore, the High Court, on the judicial side, had no reason to interfere. The initial discreet inquiry, and the subsequent preliminary inquiry were both for the purpose of ascertaining the suitability of the respondent, and not for establishing any allegations against her. If that is so, they submit, that there was no reason for the High Court on the judicial side to interfere in the decision arrived at by the High Court administration, to discontinue the services of the respondent on the ground of unsuitability. The appellants thus relied upon a judgment of this Court in *Oswal Pressure Die Casting Industry v. Presiding Officer* reported in 1998 (3) SCC 225. In that matter, it was held that once it was found that the assessment made by the employer was supported by some material and was not mala-fide, it was not proper for the High Court to substitute its satisfaction in place of that of the employer. Reliance was also placed on the judgment in *Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd.* reported in 1999 (2) SCC 21, which is a case wherein it is held that if a regular departmental inquiry is started, a charge memo is issued, reply obtained, and an inquiry officer is appointed, and thereafter also if the inquiry is

dropped and a simple notice of termination is issued, even than the action will not be held to be punitive.

22. Lastly, the judgment of this Court in High Court of Judicature at Bombay v. Sashikant S. Patil and Anr. reported in AIR 2000 SC 22 (equivalent to 2000 (1) SCC 416), was relied on, where this Court has held that when a constitutional function was exercised on the administrative side of the High Court, any judicial review thereof, should be made with great care and circumspection, and confining strictly to the parameters set by this Court in the decisions holding the field.

Submissions of behalf of the respondent:-

23. The respondent relied upon the law laid down from Parshotam Lal Dhingra v. Union of India reported in AIR 1958 SC 36 onwards. In that case it was held by the constitution bench that if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may choose to punish the servant, and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment, and the requirements of Article 311 must be complied with.

24. The next judgment cited is one of three Judges of this Court in State of Bihar and Ors. v. Shiva Bhikshuk Mishra reported in 1970 (2) SCC 871 wherein it is observed as follows:-

“5. .... So far as we are aware no such rigid principle has ever been laid down by this court that one has only to look to the order and if it does not contain any imputation of misconduct or words attaching a stigma to the character or reputation of a Government Officer it must be held to have been made in the ordinary course of administrative routine and the court is debarred from looking at all the attendant circumstances to discover whether the order had been made by way of punishment.....”

These judgments have been followed by a bench of seven Judges in Shamsher Singh v. State of Punjab & Anr. reported in AIR 1974 SC 2192 (equivalent to 1974 (2) SCC 831), where this Court was concerned with the termination of the services of a probationary judicial officer on the basis of a vigilance inquiry, which was conducted by the State Government on the request of the High Court. The Court held the termination to be bad, and

while doing so laid down the law in this behalf in no uncertain terms in paragraphs 63 to 66 (of the SCC report) which read as follows:-

“63. No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

64. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection. In *Gopi Kishore Prasad v. Union of India*<sup>1</sup> it was said that if the Government proceeded against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment. Instead of taking the easy course, the Government chose the more difficult one of starting proceedings against him and branding him as a dishonest and incompetent officer.

65. The fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment (see *State of Orissa v. Ram Narayan Das*<sup>2</sup>). If there is an enquiry the facts and circumstances of the case will be looked into in order to find out whether the order is one of dismissal in substance (see *Madan Gopal v. State of Punjab*<sup>3</sup>). In *R.C. Lacy*

v. State of Bihar<sup>4</sup> it was held that an order of reversion passed following an enquiry into the conduct of the probationer in the circumstances of that case was in the nature of preliminary inquiry to enable the Government to decide whether disciplinary action should be taken. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2) (see *R.C. Banerjee v. Union of India*<sup>5</sup>). A preliminary inquiry to satisfy that there was reason to dispense with the services of a temporary employee has been held not to attract Article 311 (see *Champaklal G. Shah v. Union of India*<sup>6</sup>). On the other hand, a statement in the order of termination that the temporary servant is undesirable has been held to import an element of punishment (see *Jagdish Mitter v. Union of India*<sup>7</sup>).

66. If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment then a probationer is entitled to attract Article 311. The substance of the order and not the form would be decisive. (see *K.H. Phadnis v. State of Maharashtra*<sup>8</sup>)”

25. These propositions have been reiterated in a number of judgments thereafter, and the counsel for the respondent referred to *Anoop Jaiswal v. Govt. of India* reported in 1984 (2) SCC 369, where this Court held that, the Court can go behind the formal order of discharge to find out the real cause of action. In that matter, the order of discharge of the probationer on the ground of unsuitability was actually based upon the report/recommendation of the concerned authority indicating commission of an alleged misconduct by the probationer. The Court held that the order was punitive in nature, and in the absence of any proper inquiry it amounted to violation to Article 311 (2) of the Constitution of India.

1. AIR 1960 SC 689: (1960) 2 SCR 982: (1960) 1 Lab LJ 262

2. (1961) 1 SCR 606: AIR 1961 SC 177: (1961) 1 SCJ 209

3. (1963) 3 SCR 716: AIR 1963 SC 531: (1963) 2 SCJ 185

4. Civil Appeal No. 590 of 1962, decided on October 23, 1963

5. (1964) 2 SCR 135: AIR 1963 SC 1552: (1964) 1 SCJ 578

6. (1964) 5 SCR 190: AIR 1964 SC 1854: (1964) 1 Lab LJ 752

7. AIR 1964 SC 449: (1964) 1 Lab LJ 418

8. 1971 Supp SCR 118: (1971) 1 SCC 790

At the end of paragraph 13 of the judgment this Court observed as follows:-  
“13.....Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311 (2) of the Constitution.”

26. The propositions in this behalf, as to what constitutes a motive, and what constitutes a foundation for the action were once again crystallized in the judgment of this Court in Chandra Prakash Shahi Vs. State of U.P. & Ors. reported in 2000 (5) SCC 152, where in paragraph 28 and 29 of the judgment of this Court laid down the relevant propositions which are as follows:-

“28. The important principles which are deducible on the concept of “motive” and “foundation”, concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of ”motive”.

29. “Motive” is the moving power which impels action for a definite result, or to put it differently, “motive” is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.”

27. Our attention was drawn to a judgment of a Bench of three Judges of this Court in *Union of India & Ors. v. Mahaveer C. Singhvi* reported in 2010 (8) SCC 220, where a probationer was discharged from his services. The findings were arrived at against him behind his back as recorded in paragraph 46 of the judgment, and although the termination was claimed to be a termination simpliciter, the High Court had found that it was a camouflage for the real intention of the petitioners. This Court upheld the judgment of the High Court, following the law laid down from time to time as aforesaid, and held that if a finding against a probationer is arrived at behind his back on the basis of the inquiry conducted into the allegations made against him, and if the same formed the foundation of the order of discharge, the same would be bad and liable to be set aside. On the other hand if no inquiry was held or contemplated, and the allegations were merely a motive for the passing of an order of discharge of a probationer without giving him a hearing, the same would be valid. The facts of that case were held as not falling under the latter category, and it is submitted that the present case also does not fall under that category.

Consideration of the legal submissions:-

28. Having gone through the salient judgments on the issue in hand, one thing which emerges very clearly is that, if it is a case of deciding the suitability of a probationer, and for that limited purpose any inquiry is conducted, the same cannot be faulted as such. However, if during the course of such an inquiry any allegations are made against the person concerned, which result into a stigma, he ought to be afforded the minimum protection which is contemplated under Article 311 (2) of the Constitution of India even though he may be a probationer. The protection is very limited viz. to inform the person concerned about the charges against him, and to give him a reasonable opportunity of being heard. Having noted the facts as they

have emerged on the record, can the preliminary inquiry conducted against the respondent in the present case be said to be an innocent one only to assess her suitability? Is it not apparent that certain aspersions were cast on the character of the respondent during the course of the conduct of this inquiry on her suitability? If that was so, was it not expected from a High judicial institution like the High Court to afford her the minimum opportunity to defend herself? In *Shamsher Singh (supra)* this Court has observed that the Subordinate Judges are under the care and custody of the High Court. This custody and care certainly requires the High Court to afford the Subordinate Judges the minimum opportunity which is otherwise available to every other civil servant under Article 311 (2).

29. Having noted the aforesaid legal position, we must pay heed to the lament of this Court as expressed in the case of *Ishwar Chand Jain v. High Court of Punjab & Haryana and Ors.* reported in 1988 (3) SCC 370. In that matter, the probationary service of an Additional District and Sessions Judge was terminated on the basis of High Court's conclusion regarding suitability. This Court, however, found that the action taken against the appellant was basically because of some grievances made by the members of the Bar, and there was no justifiable material available on the record of the Court. The members of the Bar Association had passed a resolution condemning him on a trifling matter, as observed by this court. This Court observed in the end of paragraph 7 in following words:-

“7. ....If the members of the Bar Association pass resolution against the presiding officers working in subordinate courts without there being any justifiable cause it would be difficult for judicial officers to perform their judicial functions and discharge their responsibilities in an objective and unbiased manner. We are distressed to find that the High Court instead of protecting the appellant took this incident into consideration in assessing the appellant's work and conduct.”

In this matter, the Bar Association passed a resolution against the Additional Sessions Judge for not detaining a witness on the request of the counsel for the party to enable him to bring summons for effecting service on him, without there being any requisition from the court of the Chief Judicial Magistrate. This Court noted that if such resolutions are passed, it will be difficult for the judicial officers to perform their function in an objective and unbiased manner. This Court was constrained to observe that the High Court had failed to protect the appellant. What had distressed this Court was that the High Court, instead of protecting the appellant had taken into account the unjustified allegation made by the bar, while assessing the work and conduct

leading to discontinuation of his probation services. The same appears to be the situation in the present case.

30. Shashikant Patil (supra) was altogether a different case. That was a matter where a full-fledged departmental inquiry was conducted against the respondent. It is true that the inquiry report had exonerated the respondent, and the disciplinary committee had reversed that decision. The High Court on the judicial side had interfered with the decision of the disciplinary committee. It is this decision of the High Court which came to be overturned in this case, and it was in this context that this Court observed: “when such a constitutional function was exercised by the administrative side of the High Court, any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court.” The present case can not be said to be one where the High Court on judicial side has erred as in Shashikant Patil (supra) in exercising its powers as claimed by the appellants.

31. As held by this Court time and again, it is the responsibility of the High Court to protect honest judicial officers. As the facts in this case indicate, apart from the fact that no opportunity was afforded to the respondent, even the material placed on record did not establish any such aspect which would lead to a conclusion of unsuitability. The disposal of the respondent was very good, and the complaints by the subordinate staff were clearly motivated. There was no involvement of the respondent in the suicide by the wife of Shri N.P. Thakker, and all that the High Court administration could lay hand on was the telephonic conversations which the respondent had with Mr. Thakker. The inference of unsuitability drawn by the High Court administration was therefore totally uncalled for. The impugned judgment setting aside the termination order dated 14th December 2007 issued on the ground of unsuitability is, therefore, fully justified.

32. One of the submissions which was advanced on behalf of the appellants was that, in such a situation the High Court, on its judicial side, ought to have given a further opportunity to the High Court administration to conduct a further inquiry against the respondent. In our view, keeping in mind the material on record, such a further exercise was not called for, and in any case certainly no more. The services of the respondent have been terminated way back in 2007. Six long years have gone thereafter, and for no fault of hers, the respondent has suffered. Directing any further inquiry would add salt to the injury. The conclusion arrived at by the High Court administration that the performance of the respondent was not good and satisfactory, and that she was not suitable for the post she was holding was on the face of it for extraneous reasons. Consequently with a view to do complete justice,

the Respondent will have to be held as having completed her probation satisfactorily, and that she was entitled to continue in the post that she was holding.

33. We may however, note that in spite of this position, Mr. R.P. Bhatt, learned senior counsel appearing for the respondent has stated that though the decision of the High Court administration has seriously affected her personal life, the respondent is basically interested in vindicating her position. He has, therefore, fairly made a statement, on instructions, that the respondent is confining her prayer for backwages to the period subsequent to her being vindicated by the judgment of the High Court, dated 15.5.2009 pronouncing that the termination of her services was unjustified, and bad in law.

34. Before we conclude, we must once again reflect on the facts that have emerged in the present case. As noted earlier, the respondent was a candidate who had obtained a high rank in the selection for the judicial service, and was given an independent posting in a rural area, where she was living all alone. Her disposal of cases had been very good to say the least. The complaints made by her, regarding the misbehaviour of the staff, and the harassment to her by a section of the bar, were not heeded by the then District Judge, leave aside making an attempt to understand the difficulties faced by her. Instead, certain unjustified adverse remarks were made against her. Subsequently, the then District Judge conducted the preliminary inquiry against her, in his capacity as the vigilance officer, wherein without any justification he tried to connect her with the death of the wife of another judicial officer. It is the duty of the District Judge and also of the High Court to protect the judicial officers against unjustified allegations. However, what we find in the present case is that instead of doing the same, an investigation was conducted against the respondent without affording her any opportunity, though it contained allegations against her character, and the investigation was sought to be justified as determination of her suitability for the post which she was holding. We would like to take this opportunity to emphasise that the High Courts must see to it that the hostile work environment for junior judicial officers, particularly the lady officers, is eliminated. This is necessary to encourage the young officers to put in good judicial work without fear or favour. We are constrained to say that in the present case the High Court administration has clearly failed in this behalf. In the circumstances, we have no reason to interfere in the judgment and order of High Court and we confirm the same.

35. Hence, we pass the following order:-

(i) The appeal is dismissed without any order as to the costs.

(ii) The respondent is held to have completed her probation satisfactorily. The appellants are directed to reinstate the respondent in her service with continuity and all consequential benefits. She will be entitled to her seniority as if she was never terminated from her service. The order of reinstatement and posting will be issued within four weeks from today.

(iii) The respondent will be entitled to the backwages. However, the backwages payable to her are restricted to the period subsequent to the decision of the High Court dated 15.5.2009. She will be given a fitment in salary on the basis of her continuity in services, and the backwages will be calculated and paid accordingly.

(iv) We direct the appellants to make the fitment in salary and calculate and pay the backwages within 8 weeks hereafter.